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June 20, 1997

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W. - Room 222
Washington, DC 20554

Re: *Ex Parte* - Non-Accounting Safeguards, CC Docket No. 96-149

Dear Mr. Caton:

This letter responds to a number of questions posed to AT&T during a June 5, 1997 meeting and a June 13 conference call concerning the exchange access provisioning reporting requirements proposed in the Further Notice of Proposed Rulemaking ("FNPRM") in CC Docket No. 96-149. In that proceeding, the Commission sought comment as to the reporting obligations that should be imposed on the BOCs in order both to monitor compliance with and to permit enforcement of § 272(e)(1) of the 1996 Act, which prohibits the BOCs from discriminating in favor of themselves or their affiliates in provisioning telephone exchange service and exchange access service.

AT&T was asked to respond to the following eight questions:

1.) *How would the data the FNPRM proposes to capture be reported?*

Many of the metrics proposed in the FNPRM and in AT&T's comments on that proposal would require BOCs to report provisioning results in terms of percentages achieved in successive periods; for example, metric number 3 in Appendix C to the FNPRM requests "Time to Restore and Trouble Duration" measured as the percentage of incidents restored within each successive one-hour interval until 95% of incidents have been resolved. This methodology avoids requiring BOCs to reveal competitively sensitive information such as absolute numbers of lines provisioned, while reducing the risk that apparently nondiscriminatory averaged results could mask significant discrimination.

The Commission's staff asked AT&T to provide some exemplary data to demonstrate how the BOCs would report such information, and how their access customers could utilize it. Exhibit 1 represents what might be a typical dataset that a BOC

would collect in order to provide information responsive to the "Time to Restore and Trouble Duration" metric.[1]

In order to collect the data depicted in Exhibit 1, a BOC would simply measure, for each trouble incident experienced during the relevant period (*e.g.*, for the month of May), the number of hours that elapsed from the time/date stamp on the electronic "trouble ticket" it received from its access customer -- here, its affiliate -- until the time/date stamp on the electronic notification returned to that customer indicating that that the trouble was resolved. Exhibit 1 posits that 185 trouble incidents occurred in the affiliate's DS1 connections during the period. Although these 185 data points are not depicted here, each would simply consist of a time interval, measured in hours.

The column "Hours to Restore" in Exhibit 1 is a measure of the number of hours required to resolve a trouble. The column "Frequency" shows the number of incidents that required a particular number of hours to resolve -- in this example there were 5 incidents that resolved within 1 hour, 7 incidents resolved within two hours, 17 incidents resolved within 3 hours, and so on. Each time interval should be rounded up to nearest hour; *i.e.*, an incident that requires 3 hours and 15 minutes to resolve should be recorded as resolved within four hours.

The third column in Exhibit 1, "Percent Restored," gives the percentage of the total number of incidents occurring that were resolved in a particular number of hours. (In this example, calculated as Frequency divided by 185, which is the total number of incidents.) Thus, 5 incidents -- or 2.7% of the total incidents -- were resolved within 1 hour, and 17 incidents -- 9.19% of the total -- were resolved within three hours.

The final column, "Cumulative Percentage Restored," gives a running total of the percentage of incidents resolved. In the example in Exhibit 1, after 14 hours the BOC has resolved at least 95% of trouble incidents, a total of 96.22%. Because data will rarely break cleanly at the 95% point, for this and other metrics BOCs should be required to report information up to and including whatever time interval will ensure that they depict at least that cumulative percentage.

Exhibit 2 depicts the data from Exhibit 1 that would actually be reported by the BOC for Time to Restore and Trouble Duration for DS1 connections. For each interval -- here, hours -- the BOC would simply report the percentage of troubles resolved during that interval. As this example shows, a BOC need not reveal the actual number of troubles it experienced.

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[1] Not all of the data in Exhibit 1 would be reported -- for example, the exhibit shows the actual number of DS1 lines experiencing troubles. Exhibit 1 is provided only for purposes of illustrating how the information in § 272(e)(1) reports would be derived.

Because the Time to Restore metric only provides information concerning a BOC's performance in repairing whatever troubles may occur, not the number of such troubles, a competitor cannot verify whether the BOC's affiliate has been provisioned with circuits that are less likely to fail, and therefore possibly of better quality or better installed, than those the BOC provides to its other access customers. This fact underscores the need for quality-related provisioning metrics such as those AT&T and other CLECs proposed in their comments on the FNPRM.

The other interval-based metrics proposed in the FNPRM and in AT&T's comments would be reported in the same fashion as the example above. Thus, to respond to metric number 3 proposed in the FNPRM, Time to Firm Order Confirmation ("FOC") measured in terms of percentage received within successive 24-hour periods, a BOC would track the number of days that elapsed from the time/date stamp on electronic orders received from an access customer to the time/date stamp on its own electronic FOC. The BOC would then calculate the percentage of FOCs issued within 1 day, 2 days, etc. and provide that information in the same format shown in Exhibit 2.

The Commission and the BOCs' access customers could use the information in Exhibit 2 in a variety of ways. For example, the chart in Exhibit 3 depicts a histogram showing the distribution of the Time to Restore Intervals shown in Exhibit 2, as well as a line graph of the cumulative percentage restored over time, graphically representing these metrics' ability to detect discriminatory provisioning practices that might be hidden by simple averaged measures.

2.) *Could metrics number 1 and 2 proposed in the FNPRM be replaced by a single metric measuring the total time from a customer's request for service to installation? How would such a metric be measured?*

In their comments in this proceeding, the BOCs and their access customers have disputed whether § 272(e)(1) reporting should measure the time from the BOC's promised due date to a circuit being placed in service, or should measure that interval beginning from a customer's desired due date. As AT&T stated in its comments on the FNPRM, measuring performance only against BOC-promised deadlines will not achieve the aims of the FNPRM. If a BOC routinely promised to complete equivalent requests by its competitors in a longer period than it promised to itself or its affiliate, and met its self-imposed deadline in each case, a metric based on the BOC's promised due date would indicate that no discrimination was occurring -- despite the fact that competitors would be forced to accept longer service intervals.

In an effort to overcome this difficulty, AT&T proposed in its comments on the FNPRM that the Commission require BOCs to report their performance as measured against both their promised deadlines and the due dates their customers requested, as well as a third metric, Time from Service Request to Installation, measured in terms of percentage installed within successive 24-hour periods until 95% of requests

are completed. This third metric could serve as a check on parties' efforts to game the other two measures by intentionally manipulating deadlines.

It has been suggested that because both customer-desired due date and BOC-promised due date potentially are subject to manipulation, it might be preferable to rely solely on Time from Service Request to Installation, and to eliminate the FNPRM's proposed metrics number 1 and 2. AT&T believes, however, that in order to be effective, § 272(e)(1) reporting should require the BOCs to track their performance measured against customer-requested deadlines. Specifically, the Commission should include the metric Time From Customer-Desired Due Date To Circuit Being Placed In Service, measured as percentage installed within successive 24-hour periods until 95% completed. If the Commission's reporting requirements include both Time From Customer-Desired Due Date To Circuit Being Placed In Service and Time from Service Request to Installation, then AT&T believes it would not be necessary to include the FNPRM's proposed metric number 1, Successful Completion According to Desired Due Date.

There are three key reasons to include an interval-based customer-desired due date metric in § 272(e)(1) reporting: First, AT&T currently receives information from all of the BOCs measuring their access provisioning against customer-desired due date, or "CDDD."[2] Second, while access requests are generally handled by an automated process in which both the BOCs' and their customers' computer systems use standardized provisioning intervals, for a significant percentage of orders access customers contact a BOC by telephone and request a due date shorter than the standard interval. If a BOC were willing to meet such special requests for itself and its affiliates, but not for competitors, then significant discrimination would go undetected in the absence of a CDDD-based measure. Moreover, such discrimination could potentially be masked, even if a Time from Service Request to Installation metric were in place, simply by lengthening some installation intervals for a BOC's less time-sensitive customers.

Third, the BOCs themselves have noted that some orders could be placed with longer lead times than the standard interval, in which case a BOC that provided on-time performance nevertheless would appear to be discriminating against competitors based on the total time intervals for installations. AT&T agrees that this is a potential risk; however, by including a CDDD measure the Commission could obviate these concerns. Even if overall installation intervals appeared to be longer for a BOC's other customer

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[2] AT&T does not currently receive these data in the form of performance over successive intervals of time. However, the BOCs will soon begin competing directly with their access customers, giving them incentives to discriminate that do not exist today. At present, AT&T has no reason for concern that a BOC may favor another IXC in its access provisioning practices, and so has not sought the additional information that interval-based measures provide. However, with BOC entry into in-region interLATA markets, interval-based metrics will be crucial to prevent BOCs from seeking to game averaged data.

than for the BOC itself or its affiliates, if the BOC were in fact meeting its customer's desired due date it would presumably not be in violation of § 272(e)(1). To the extent that BOCs are concerned that their access customers may try to manipulate the CDDD metric, if § 272(e)(1) reports also include Time From BOC-Promised Due Date to Installation and Time from Service Request to Installation, there should be sufficient cross-checks available to deter attempts by either side to game these measures.

Finally, AT&T strongly supports inclusion of a Time from Service Request to Installation metric in § 272(e)(1) reporting. As shown schematically in Exhibit 4, the time interval for this metric should begin as of the time/date stamp on an electronic order when it is first transmitted to the BOC. Because electronic ordering systems for access have been fully operational for over a decade, there is no reason to expect that the BOCs will be required to reject a significant portion of orders due to customer errors. To permit a BOC to "restart the clock" whenever it rejects an order would incent it to change its ordering processes frequently or to engage in other behaviors designed to increase reject rates.[3] The interval for Time from Service Request to Installation should end when the BOC and its access customer conduct joint testing of the circuit in question and confirm that it is operational, as shown schematically in Exhibit 4. Currently, each AT&T access order is subjected to such testing, in which an AT&T employee and a BOC employee speak by telephone to confirm proper installation and each records the time and date of testing for future reference and cross-checking.

3) *Why does AT&T support measuring PIC-related metrics (Time from PIC Change Request to Implementation and Time to Restore PIC After Trouble Incident) by CIC code?*

Metrics related to PICs should be measured by carrier identification codes ("CIC" or 10XXX codes) rather than by carrier because carriers frequently -- and increasingly -- employ more than one CIC. The Commission's recent Second Report and Order in CC Docket No. 92-237 imposed measures designed to make more CIC codes available, observing that "demand for CICs has grown because the number of carriers requesting CICs has increased and because carriers are using CICs for an increasing number of purposes."[4] For example, MCI as recently begun advertising its "10321" CIC code in addition to its presubscribed long distance services. Moreover, when end-users are PIC'd, they are presubscribed not to a carrier, but to a particular CIC.

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[3] If a BOC could demonstrate that it was indeed forced to reject a high percentage of a particular customer's orders due to that customer's errors, such a fact would of course bear on whether an apparent disparity in provisioning intervals were discriminatory.

[4] Second Report and Order, Administration of the North American Numbering Plan: Carrier Identification Codes, CC Docket No. 92-237, released April 11, 1997, ¶ 3.

If § 272(e)(1) reporting were by carrier rather than CIC, BOCs could serve their most profitable end-user customers via a particular CIC and offer those entities better service than it provided to subscribers that it served from one or more less-favored CICs. Reporting provisioning results by carrier would allow the BOCs effectively to "average" results across CICs, thus masking potential discrimination.

4) *Why does AT&T seek to include a "POTS" measure for the Time to Restore and Trouble Duration metric?*

The POTS segment of the Time to Restore and Trouble Duration metric is designed to capture troubles in ordinary switched access telephone lines, as opposed to DS0 links, which are dedicated digital connections to AT&T's network. Trouble reports affecting POTS customers are critical because they are the sole measures proposed for § 272(e)(1) reporting that would be applicable to residential and small business users. It is critical that AT&T and other carriers be able to resolve troubles when their customers report that they are having difficulty completing long distance calls.

5) *What information does the Mean Time To Clear Network / Average Duration of Trouble metric add to Time to Restore and Trouble Duration?*

As currently proposed, the Time to Restore and Trouble Duration metric captures the time intervals to resolution for only 95% of troubles. Mean Time to Clear Network / Average Duration of Trouble provides critical additional information regarding the experience of the remaining 5% of troubles, because it is measured across <u>all</u> trouble incidents. If a BOC's access customers are unable to determine whether they receive equivalent treatment for 1 in 20 of their trouble reports, then a BOC could discriminate by providing very long times to resolution for this fraction of troubles. In addition, Mean Time to Clear Network / Average Duration of Trouble is a metric that the BOCs currently provide to AT&T.

In order to simplify the proposed § 272(e)(1) report format, the Commission could eliminate Mean Time to Clear Network / Average Duration of Trouble if it also extended the Time to Restore and Trouble Duration metric to cover resolution of <u>99%</u> of trouble incidents. This change would provide the Commission and the BOCs' access customers with essentially all of the additional information that could be derived from the Mean Time to Clear Network metric, and would not impose an appreciable additional burden on the BOCs.

6) *What is meant by a PIC "trouble" in the metric Time to Restore PIC After Trouble Incident?*

A PIC "trouble" is a situation in which a customer is PIC'd incorrectly -- that is, the customer has designated AT&T as its presubscribed carrier, but its calls are not in fact being competed over AT&T's network. This metric should be measured in 1-hour intervals because a BOC's access customer stands to lose revenue during each hour in which its customers are PIC'd incorrectly. If this metric were measured in 1- or 2-day intervals as some BOCs have suggested, then a BOC could allow its competitors to lose revenue for up to 23 or 47 hours while correcting PIC troubles for its own affiliate within a much shorter interval, without such discrimination being detectable in § 272(e)(1) reports.

7) *For purposes of § 272(e)(1) reporting, should an order for, e.g., ten DS1 connections be regarded as a single "installation" or as ten?*

Orders for multiple access lines to a single location should be treated as a single customer request, and failure to fulfill any part of such a request should be considered a delayed installation. In the access provisioning reports AT&T currently receives from the BOCs, such an order is regarded as a single access service request, or "ASR," and must be completed in full in order to be deemed timely.

AT&T's customers expect their orders to be completed on the date promised, and are disappointed with AT&T's service if only a portion of their requests can be fulfilled on-time. To permit a BOC to install 9 out of 10 lines in single ASR, and then to report 9 out of 10 orders as completed within the customer's desired due date would invite gaming. For example, a BOC could lengthen its installation interval for 1 out of 10 of its affiliate's less profitable or less time-sensitive customers, while failing to complete 10% of a large ASR for a competitor's major customer.

8) *Should § 272(e)(1) reporting requirements be applied to non-BOC ILECs?*

AT&T does not believe that § 272 can be read to apply to non-BOC ILECs. However, the Commission's recent Second Report and Order in CC Docket No. 96-149 expressly found that "an independent LEC, like a BOC, potentially could abuse its market power in the provision of exchange access to advantage its interexchange affiliate by discriminating against the affiliate's interexchange competitors with respect to the provision of exchange and exchange access services."[5] For this reason, and because of the risk that independent LECs ("ICOs"), like BOCs, also could engage in cost misallocations

[5] Second Report and Order, Regulatory Treatment of LEC Provision Of Interexchange Services Originating In The LEC's Local Exchange Area, CC Docket No. 96-149, FCC 97-142, released April 18, 1997, ¶ 160 ("Second Report and Order").

and other anticompetitive practices designed to advantage their interexchange affiliates,[6] the Second Report and Order imposed structural safeguards on the ICOs that parallel those required by § 272.

In particular, the Second Report and Order required independent LECs to provide interexchange services via a separate affiliate, and prohibited them from jointly owning transmission and switching facilities with their affiliates.[7] The order found that the prohibition on joint ownership was essential in order to "deter any discrimination in access to the LEC's transmission and switching facilities by requiring the affiliates to follow the same procedures as competing interexchange carriers to obtain access to those facilities."[8] Thus, this aspect of the ICO separation requirements helps ensure that their affiliates will obtain exchange access services on an arm's length basis, and "that all competing in-region providers have the same access to provisioning of transmission and switching as that provided to the independent LEC's affiliate."[9]

Although the Second Report and Order did not address reporting requirements, the above findings precisely track those that led the Commission to propose exchange access provisioning reporting in the First Report and Order in the same docket. The First Report and Order prohibited joint ownership of transmission and switching facilities in large part because otherwise "the affiliate would not have to contract with the BOC to obtain such facilities, thereby precluding a comparison of the terms of transactions between a BOC and a section 272 affiliate with the terms of transactions between a BOC and a competitor of the section 272 affiliate."[10] Thus, the Commission expressly sought to require BOCs and their affiliates to contract for exchange access so that provisioning for both could be monitored to detect potential discrimination. The First Report and Order also found that in the absence of reporting requirements, BOCs' competitors "will be unable readily to ascertain how long it takes a BOC to fulfill it own or its affiliates' requests for service."[11] This conclusion is equally valid as to the ICOs -- absent reporting requirements, their competitors will have no means to determine what provisioning intervals or quality of service independent LECs provide to themselves or their affiliates.

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6 Compare id., ¶ 159 with First Report and Order and Further Notice of Proposed Rulemaking, Implementation of Non-Accounting Safeguards of Sections 271 and 272 of the Telecommunications Act of 1934, as Amended, CC Docket No. 96-149, FCC 96-489, released December 24, 1996, ¶¶ 156-160 ("First Report and Order").

7 See Second Report and Order, ¶ 163.

8 Id.

9 Id., ¶ 169.

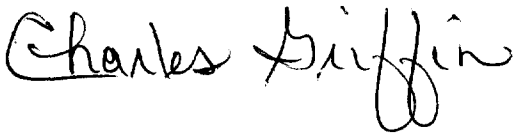
10 First Report and Order, ¶ 160.

11 Id., ¶ 242.

Plainly, the same logic that led the Commission to propose exchange access provisioning reporting requirements in the First Report and Order is fully applicable to the ICOs. The Second Report and Order expressly held that the Commission has the authority to compel ICOs to offer in-region interexchange services on a separated basis in order to prevent them from abusing their market power to injure interexchange competition.[12] The Commission also has the adjunct power to impose reporting requirements such as those proposed in the FNPRM in order to further this goal. Indeed, AT&T believes that the Second Report and Order's findings compel the conclusion that any reporting requirements applied to the BOCs pursuant to § 272(e)(1) should also be applied to the ICOs. Accordingly, AT&T requests that in conjunction with its order in the instant proceeding establishing exchange access provisioning reporting requirements, the Commission issue a Further Notice of Proposed Rulemaking proposing to extend those same requirements to independent LECs.

Two copies of this Notice are being submitted to the Secretary of the Commission in accordance with Section 1.1206(a)(2) of the Commission's rules.

Sincerely,



Attachment

cc: D. Kirschner
L. Sockett

12 See Second Report and Order, ¶ 168.

Exhibit 1

Time to Restore and Trouble Duration for DS1 Circuits
Exemplary Sorted Raw Data For BOC Affiliate

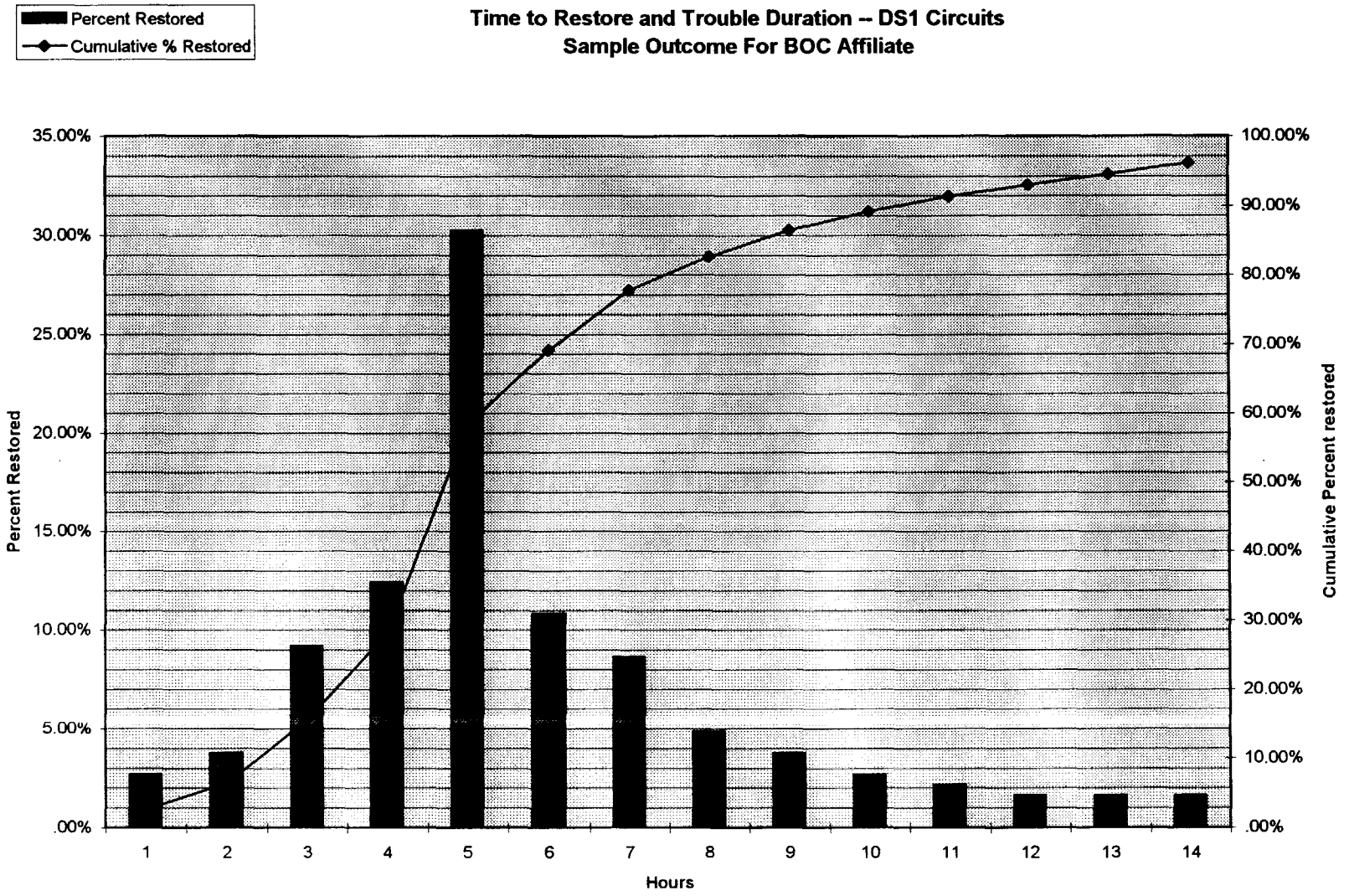
	Hours to Restore	Frequency	Percent Restored	Cumulative % Restored
	1	5	2.70%	2.70%
	2	7	3.78%	6.49%
	3	17	9.19%	15.68%
	4	23	12.43%	28.11%
	5	56	30.27%	58.38%
	6	20	10.81%	69.19%
	7	16	8.65%	77.84%
	8	9	4.86%	82.70%
	9	7	3.78%	86.49%
	10	5	2.70%	89.19%
	11	4	2.16%	91.35%
	12	3	1.62%	92.97%
	13	3	1.62%	94.59%
95% threshold--	14	3	1.62%	96.22%
	15	2	1.08%	97.30%
	16	2	1.08%	98.38%
	17	2	1.08%	99.46%
	18	1	.54%	100.00%
Total Troubles for Period =		185		

Exhibit 2

Sample Reporting Format

Interval		1	2	3	4	5	6	7	8	9	10	11	12	13	14
Time To Restore and Trouble Duration (% restored within each successive 1-hour interval, until resolution of 95% of incidents)	DS3 and above														
	DS1	2.7	3.8	9.2	12.4	30.3	10.8	8.6	4.9	3.8	2.7	2.2	1.6	1.6	1.6
	DS0														

Exhibit 3


Percent Restored
Cumulative % Restored
Time to Restore and Trouble Duration -- DS1 Circuits
Sample Outcome For BOC Affiliate
35.00%
30.00%
25.00%
20.00%
15.00%
10.00%
5.00%
.00%
Percent Restored
100.00%
90.00%
80.00%
70.00%
60.00%
50.00%
40.00%
30.00%
20.00%
10.00%
.00%
Cumulative Percent restored
1
2
3
4
5
6
7
8
9
10
11
12
13
14
Hours

Access Provisioning Metrics
Order Flow Intervals

Exhibit 4